

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1822-JLR

DECLARATION OF ANDREA
PALLIOS ROBERTS IN SUPPORT OF
MOTOROLA'S MOTION TO
PRECLUDE MICROSOFT FROM
RELYING ON NEW DAMAGES
THEORIES

I, Andrea Pallios Roberts, declare as follows:

1. I am an attorney at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP,
counsel of record for Defendants in this matter. I have personal knowledge of the facts stated
herein and if called to testify could and would competently testify thereto.

2. Attached as Exhibit A is a true and correct copy of Microsoft's Initial Disclosures
dated February 7, 2011.

3. Attached as Exhibit B is a true and correct copy of Microsoft's Supplemental Initial
Disclosures dated June 22, 2012.

DECLARATION OF ANDREA PALLIOS ROBERTS IN
SUPPORT OF MOTOROLA'S MOTION TO PRECLUDE
MICROSOFT FROM RELYING ON NEW DAMAGES
THEORIES - 1

CASE NO. C10-1822-JLR

4839-3990-2483.1

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1 4. Attached as Exhibit C is a true and correct copy of Microsoft's Supplemental Initial
2 Disclosures dated July 18, 2012.

3 5. Attached as Exhibit D is a true and correct copy of cited excerpts of the transcript
4 of the March 14, 2013 Teleconference before the Court.

5 6. Attached as Exhibit E is a true and correct copy of Microsoft's Supplemental
6 Interrogatory Responses served April 3, 2013.

7 7. Attached as Exhibit F is a true and correct copy of Motorola's Second Notice of
8 Rule 30(b)(6) Deposition of Microsoft, served on April 5, 2013.

9 8. Attached as Exhibit G is a true and correct copy of a letter I sent to Microsoft's
10 counsel on April 5, 2013. In that letter, Motorola asked Microsoft to "supplement its Initial
11 Disclosures to identify any fact witnesses on which it intends to rely to support its damages
12 theories" by April 10, 2013. The letter further stated: "To the extent that Microsoft discloses more
13 than three such witnesses, we expect that Microsoft will not object to Motorola taking greater than
14 4 depositions on damages. . . . We further expect that because Microsoft deprived Motorola of the
15 opportunity to serve written discovery directed to these topics, it will not object to Motorola
16 serving interrogatories, document requests, or requests for admission on damages without leave of
17 court, and that Microsoft will agree to respond to those requests within 15 days of service."

18 9. Attached as Exhibit H is a true and correct copy of a letter Microsoft's counsel sent
19 to me on April 9, 2013. In that letter, Microsoft's counsel stated: "Microsoft is unwilling to
20 deviate from any of the Court's orders regarding the scope of discovery."

21 10. Attached as Exhibit I is a true and correct copy of Microsoft's Supplemental Initial
22 Disclosures served on April 12, 2013.

23 11. Attached as Exhibit J is a true and correct copy of a letter I sent to Microsoft's
24 counsel on April 22, 2013. In that letter, I explained Motorola's position that it is prejudiced by
25 Microsoft's late disclosure of its new damages theories for several reasons. Specifically, the letter
26 notes that Microsoft disclosed five new witnesses to testify on this theory, Microsoft had not yet

1 designated witnesses to testify on the topics in Motorola's April 5, 2013 Rule 30(b)(6) deposition
 2 notice, and that Microsoft had not yet indicated when its document production would be complete
 3 and that Microsoft appeared to be producing only documents that support its theories.

4 12. Attached as Exhibit K is a true and correct copy of a letter Microsoft's counsel sent
 5 to me on April 24, 2013. In this letter, Microsoft's counsel again stated: "we do not agree that the
 6 damage-related discovery authorized by the Court is inadequate or creates any material prejudice
 7 to Motorola, including for the reasons stated in our letter of April 9."

8 13. I met and conferred by telephone with Microsoft's counsel regarding Microsoft's
 9 new damages theory on Friday, April 26 and Monday, April 29. Microsoft's counsel, Shane
 10 Cramer, Chris Wion, and Ellen Robbins participated in the teleconferences. Motorola's counsel
 11 Brian Cannon, Ralph Palumbo, and Phil McCune also participated in one or both of the
 12 teleconferences. During the parties' April 26 conference, Microsoft's counsel maintained its
 13 position that it does not agree to provide Motorola with additional discovery beyond that permitted
 14 by the Court's March 14, 2013 order relating to Microsoft's damages claims. During the April 29
 15 conference, Microsoft identified the witnesses designated to testify on certain topics in Motorola's
 16 April 5, 2013 Rule 30(b)(6) deposition notice. Microsoft stated that David Killough is available to
 17 testify on topics 2, 4, and 6 on May 6, Jon DeVaan is available to testify on topic 10 on May 7,
 18 and Jeff Davidson will be made available to testify on topic 8 on an unidentified date. Microsoft
 19 further stated that if Motorola deposes each of these witnesses in their personal capacity and in
 20 their 30(b)(6) capacity, Motorola will have taken four depositions.

21 I declare under penalty of the laws of perjury that, to the best of my knowledge,
 22 information and belief, the foregoing is true and correct.

23 EXECUTED this 1st day of May, 2013, at Redwood Shores, California.

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 Andrea Pallios Roberts

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 1st day of May, 2013.

/s/ Marcia A. Ripley

Marcia A. Ripley